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By email: regmod@treasury.gov.au

Dear Sir/Madam,

***Consultation Paper - Modernising Registry Fees Exploring
Opportunities to improve fee structures for the Australian Business
Registry Services (Consultation Paper)***

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 43,000 governance and risk management professionals from the listed, unlisted and not-for-profit sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as not-for-profit organisations and the public sector. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

Governance Institute has been involved in consultation on the modernisation of the business registers program for some years. We made a submission on the Modernising Business Registry Services Discussion Paper on 15 September 2017, participated in the Modernising Business Registers Roundtable Consultation on 4 July 2018 and made a submission on the Modernising Business Registers Program Consultation Paper on 12 September 2018.

Our members welcome the opportunity of providing comments on the Consultation Paper.

Preliminary comments

Governance Institute supports the objectives of the Modernising Business Register program particularly the commitment to improving service delivery to, and reducing complexity for, business. We support reforms which improve the user experience, simplify the way clients interact with Government registers and streamline internal processes. Business registers are an important part of Australia's business infrastructure and as we have noted on many occasions our members report significant inefficiencies and costs for users.

Some of the key issues our members experience daily as part of their interaction with the current registers, which need to be addressed as part of the reform, include:

- A lack of interaction between registers, so that a minor change in details requires lodgement of multiple forms
- A lack of integration between the ACNC and ASIC registers
- An inconsistent approach to payment options across forms and registries
- A confusing approach to fee increases, which are often applied in an ad hoc manner
- The high level of Australian registry fees compared to other jurisdictions
- Inflexible and out-dated methods for payment. Having a number of different options available to make payments would be more efficient
- Onerous 'wet ink' signature obligations for non-critical documents accompanied by very tight lodgement deadlines, which can often expose the company to late fees
- The current system of forms and deadlines does not adopt a well-structured or consistent approach, which leads to inefficiencies in terms of time spent by companies in administering these matters as well as exposing the company to the likelihood of late fees
- An inflexible and bureaucratic approach to late fees and significant red tape in late fee waiver applications,
- The current lodgement deadlines under the Corporations Act were set up when each State operated its own ASIC office utilising over-the-counter lodgements. Given the change in structure of the ASIC offices and the rise of digital transactions, there has been no deadline adjustments to take into account these changes and also changes related to reduced postal services as well as the impact of COVID-19 on transport infrastructure and services,
- Companies cannot interrogate their own information on the register which makes searching for information very difficult. Companies should be able to do this, without having to pay a search fee to review such information.

Key recommendations

Governance Institute makes the following recommendations:

Operation of registers

- provisions dealing with the detail of the operation of the registers be included in regulations. This allows the Government to respond more quickly to changes in technology which impact on how users interact with the registers
- the Registrar have maximum flexibility to carry out registry functions. For example, the discretion to introduce new forms as the need arises and introduce new ways in which information is notified to, or corrected by, the registry
- the time periods for lodgement of documents and notification of information be reviewed to ensure consistency of lodgement time periods
- users to be able to lodge all documents electronically and receive immediate verification of lodgement
- changes to details be notified to the registry once, which would then flow through to each affected company – for example, in a group of related companies with common directors, an update to the address of a director should flow through automatically to all relevant companies of which that person is a director
- improvements made to the linkages between the ASIC and ACNC registers
- dispense with onerous and unnecessary 'wet ink' signature obligations. For example, all directors must provide an original signature on a Compliance Plan that has a 14- day lodgement deadline the search functions within the registers be upgraded to enable users to search across the data bases in a more efficient and effective way
- restoration of the chat function on the Registry website. Our members report this function was efficient and frequently meant there was no need to contact the ASIC Call Centre
- The Call Centre be retained to assist users, and

- The registry introduce 'account managers' for large transactions and high volume users to improve the consistency of decision making and to act as a point of contact for more complex queries.

Payments and invoicing

- current payment processes be redesigned so that they are more intuitive and efficient
- payment options for all registry items (including late fees) be consistent and expanded to include B-Pay, Post bill pay, EFT and credit card (including AMEX) and there be flexibility to enable new payment options as they are developed
- the new Registry adopt more modern processes for invoicing, drawing on the practices of other agencies and regulatory bodies which issue email or automated requests for payment including links enabling payment
- there be standard payment options across Commonwealth and State registries
- registry payment processes also be streamlined and simplified to make it easier for companies to pay for lodgements and allocate monies to companies within a corporate group

Access to registers

- a company secretary or registered agent be able to access all of their company records using the one login or identifier
- a company be able to access all of its registry data, including the ability to download previously submitted forms, at no charge. This access should be extended to the data of a company group. A registered agent should be able to access all of the company records of companies of which they are the registered agent at no charge
- our members broadly support further reduction or removal of digital retail search fees but consider while officeholders' personal details remain publicly available, retail search fees should be retained to discourage inappropriate searches by the general public looking to misuse this information
- once the new Register is operational the amount of information obtainable about officeholders should be limited to their name, Director ID and service address.
- state registries be given free access to information contained on Commonwealth registers and the Government re-use data it already holds to facilitate verification and eliminate the need for users to input information multiple times

Fees generally

- annual fee CPI Indexed fee increases be replaced by larger increases less frequently
- the high level of Australian registry fees be considered in the context of fees in other jurisdictions which are much lower and which, when added to other charges levied on companies such as AFSL fees, industry levies and fees levied on foreign companies acts as a disincentive for these entities to remain registered in Australia. It would also be useful to understand as to what regulatory functions these fees will be applied

Late fees

- given the important role they play in encouraging compliance, our members endorse the proposals to simplify the late fee regime and a tiered approach
- the Registrar have more flexibility and discretion under the late fee waiver rules, particularly in light of the impact of COVID-19 on lodging of documents over the last two years

Operation of Director ID

- the details of an officeholder's date and place of birth and their address should not be made publicly available and officers be able to nominate an address for service. The extraordinary increase in cyber security threats and scams and identity theft experienced during COVID-19 make the introduction of these safeguards even more pressing
- an identification number be introduced for company secretaries as a matter of priority, which could be their Director ID for those company secretaries who are also company directors

- once in place the public register display the officeholder name, Director ID and service address only.

We provide more detailed comment on the questions in the Consultation Paper of interest and importance to our members in the attachment.

If you wish to discuss any of the issues raised in this letter, please contact me or Catherine Maxwell.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. Motto', with a stylized flourish at the end.

Megan Motto
CEO

Attachment

Fees generally

A long-standing source of frustration for our members is the annual fee CPI Indexed fee increase. These increases are typically odd amounts, for example \$3 or \$12, which are complex to administer and necessitate the annual adjustment of internal processes and templates. For some of our members who conduct businesses providing company secretarial services to a range of clients it is often difficult and complex to explain these annual fee increases to clients. Our members consider there should be larger increases, less frequently, say on a three yearly cycle.

Our members also recommend the high level of Australian registry fees be considered in the context of fees in other jurisdictions which are much lower and which when added to other charges levied on companies such as AFSL fees, industry levies and fees levied on foreign companies acts as a disincentive for these entities to remain registered in Australia. Some members report overseas companies being levied at the maximum rate despite very limited Australian activity. For our members with global operations or clients in other jurisdictions it can be difficult to explain or justify these fees. By comparison fees charged by the [UK Companies House](#) are significantly lower.

Search fees - Question 1 Are you supportive of a further reduction to or removal of digital retail search fees?

Our members broadly support a further reduction or removal of digital retail search fees. The ability to search the register is particularly important to facilitate the conduct of business. However, they consider that while officeholders' personal details remain publicly available retail search fees should be retained to discourage inappropriate searches by the general public looking to misuse this information. They also consider that once the ABRS is operational the amount of information obtainable about officeholders should be limited to their name, Director ID and service address.

Searches for banned and disqualified officeholders should remain free as these searches form an important function.

A company should be able to access all of its registry data at no charge. This access should be extended to the data of a company group.

Our members consider that search fees for ASIC/ABRS agents should be removed which would allow them to access historical documents lodged for their companies or clients to enable them to rebuild historical records and registers in cases where these documents are lost. This should extend to documents previously lodged with ASIC that comprise a company's lodgement history. Fees for production of copies of paper documents should remain.

Question 1.1 Do you have any concerns about retaining fees on a limited range of searches?

Our members consider there are legitimate reasons to retain search fees in some situations such as where paper or certified copy records are required because the information is not available electronically.

Question 2 Which users (or use cases) should be charged an infrastructure fee? Are there any users (or use cases) that should be exempt?

Our members support retention of concessional charges for government agencies, academics and journalists. They consider the current fee schedule does not adequately address the needs

of large commercial users, particularly as the new Register will employ more sophisticated technology and be more efficient which should reduce costs, particularly at scale.

One use case which our members do not consider should be considered a wholesale operation is the administration of large corporate groups. Many of our members work with companies which have a large number of subsidiaries and complex group structures. They should not be considered 'wholesale' users. This is because they are not administering these companies as a business, but rather in the context of the overall operations of a group of companies.

Question 3 If a connection fee is introduced, which is preferable: a larger one-off fee onboarding fee, or a smaller ongoing subscription fee?

Our members would welcome further information about what the proposed fees replace and to which entities it would apply, particularly where it could negate the reduction covered in the response to Question 2.

Question 4 If a usage charge is introduced how should it be set? For example, per company, attribute, unit of measurement (eg by API call)?

Our members endorse the proposals to simplify the late fee regime and a tiered approach. A usage charge per company is likely to be easier to administer and check.

Question 5 Would you support a late fee regime with a single fee for late provision of information and a single fee for late payment?

Question 6 If so, how should these fees be designed to ensure the information held on the registers is current and accurate?

Our members support late fees as a critical means of encouraging compliance and thereby maintaining the integrity and currency of the Register. For this reason, the late fee regime should incentivise the desired behaviour – prompt lodgement of accurate information. They strongly endorse the comments in the Consultation Paper about the 'complexity of the current late fee regime is a persistent source of confusion and complaints' and does not incentivise compliance. The complexity of the current regime is such that some of our members with many years of experience, say they are baffled by the task of calculating the applicable fees for late lodgement for multiple years in some situations.

They also support fees for both late lodgement and late payment and a tiered approach. A second larger tier is usually a good motivator to encourage action/compliance/ lodgement/payment.

The fees applicable and the process should be transparent. As noted above any increases in these fees should be larger but less frequent.

Our members consider there should be greater discretion to waive late fees and the current complex process for applying for refunds of late fees needs to be addressed as a priority. Our members report the same set of circumstances can lead to varying results on different occasions.

There needs to be a review of the late fee waiver rules to give the Registrar more flexibility and discretion which would substantially improve the administrative burden on companies. Our members also consider there needs to be flexibility to move a payment that is made from one

company to another especially when the cause of the late payment is a reference number entry error, or alternatively for refunds to be given.

The existing difficulties have been exacerbated by the impact of the COVID-19 pandemic particularly for filing of paper forms and documents. Members report that companies based in Western Australia or overseas have faced significant delays to postal services, worsened by reduced cargo volumes, meaning forms and documents arrived late at the ASIC processing centre which was also subject to lock downs. They also report that in some cases items were lost in transit. This meant that critical registry information was out of date or inaccurate. Increased electronic lodgement will assist with these cases but this is still some time away. In the meantime, greater flexibility and discretion would assist these companies.

Question 7 Are there any lifecycle fees that you believe are inefficient and counterproductive and should be specifically be removed? Are there any that should be retained?

See Question 8

Question 8 Are you supportive of a rationalisation of lifecycle fees into tiered cost levels? If this change were adopted how many tiers should be there?

Our members consider that it is difficult to understand the rationale for the current list of prescribed lifecycle fees. Some lodgements attract fees, others do not. Our members support categorising lifecycle fees into tiers – with larger increases at less frequent intervals.

Reinstatement of a company

One situation which illustrates the complexity of the current fee structure arises is the interaction between the late fee regime and the fee to reinstate a deregistered company. There are legitimate reasons to reinstate a deregistered company, to enable litigation or because ASIC deregistered the company for non-payment of fees, being two of the more common reasons. The calculation to determine the costs of reinstatement and any applicable late fees is extremely complex. If this calculation is wrong, a company is then faced with the complex process of obtaining a refund.

A better way of promoting a desirable regulatory outcome would be to cap the reinstatement fees so that directors wishing to reinstate a deregistered companies are not discouraged by high reinstatement costs.

Registration fees

Our members support a fee for registration of companies. Registering a company and the responsibilities attaching to being a director of a legal entity are onerous. Hence the registration fee needs to be sufficient to deter reckless registrations. They consider the current fee of \$512 is reasonable. The main administrative burden is created by the annual indexation of fees – see above.

Renewal fees

Again our members support larger increases to these fees at less frequent intervals. An additional difficulty is that ASIC does not currently send any payment reminders for renewal fees. Given the move to a new Register, our members consider it should be straightforward to send automated payment reminders with appropriate payments links. This would also assist in reducing late fees.

Review fees

The basis of these fees is opaque and our members consider there should be more transparency about how they are calculated and to what they are applied, particularly given that these can be large amounts for public companies and are in addition to industry funding and other levies.